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Intellectual Ammunition

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Potshots

No one would ever dream of spending hundreds of millions of dollars to erect a building that would be occupied by a private corporation. But that's essentially what stadium deals do.

—STEPHEN CHAPMAN

I haven't lost my mind. It's backed up on disk somewhere.

—Bumper sticker

Bad laws are the worst sort of tyranny.

—EDMUND BURKE

All too often, we do smart things only after exhausting every conceivable dumb thing we could have done.

—THOMAS SOWELL

You have a list of 15 phone numbers to reach your family of 3.

—A sign that you've had too much of the '90s

For those of you who have children and don't know it, we have a nursery downstairs.

—Church bulletin

Brain cells come and brain cells go, but fat cells live forever.

E-mail is not to be used to pass on information or data. It should be used only for company business.

—Company email

Dolly Parton, John D. Rockefeller, and Bill Gates

by Jim Johnston

Economists like me see a lot of similarities among Dolly Parton, John D. Rockefeller, and Bill Gates. You might be thinking that this is the reason why economists have a limited social life. While that might be true, the business aspects of the lives of the three are remarkably alike.

Single suppliers are found in a lot of markets, but they are not monopolists. One example that comes to mind is Dolly Parton. She is close to being the sole supplier of a unique set of talents. Imitators of Dolly Parton cannot pass themselves off as the real thing. Likewise, software developers may not put their names on Windows and other Microsoft programs.

Both Dolly Parton and Bill Gates are protected by copyright laws, which are meant to promote the development of intellectual property. Neither technology nor show business styles are destroyed when consumed, like an apple would be. That in turn means it is difficult to exclude free riders—both consumers and other producers.

Our founding fathers recognized this problem and gave Congress the power "To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." [Art 1, Sec 8] Thus, copyright holders have a legal right to be sole suppliers of their respective products.

Being the sole supplier, however, does

not mean the copyright holder is acting as a monopolist. Economists and some legal scholars, like judge Robert Bork in his 1978 book (before he became counsel to one of Microsoft's competitors), point out that the misallocation of resources that stems from a monopoly results from artificially restricting output in order to push price above marginal cost. But neither Dolly Parton nor Bill Gates is doing that.

Dolly Parton writes and sings on music recordings, stars in movies, appears on television, and maintains an amusement park. It is fair to say she is expanding her business everywhere she can. The same can be said for Microsoft.

Standard Oil and Microsoft

Media coverage of Judge Thomas Penfield Jackson's finding that Microsoft is a monopolist frequently draws a comparison with the Standard Oil case of 1911. Both companies supposedly used their dominant

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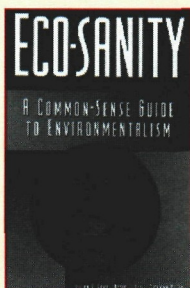
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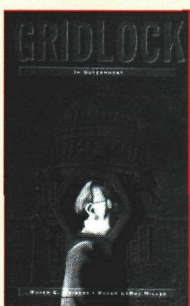
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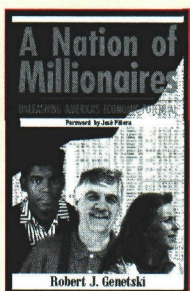
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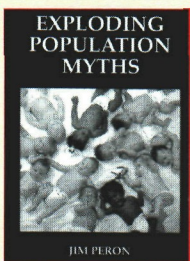
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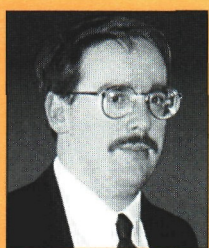
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News from the *Heartland*

by John R. La Plante
Managing Editor

The fact that you are reading this publication means that yet another scare was overblown.

Last year, much ink was spilled over the "What if" game of Y2K. Would we really see the end of the world as we know it? Some pundits predicted a recession. More alarmist prognosticators advised that we head for the hills, away from the riots and the collapse of civilization that were sure to come.

We're still standing, but, unfortunately, so is the tradition of fear-mongering. Scary possibilities make for more interesting headlines, after all. They also make it easier for those seeking government power to restrict business and personal conduct to justify their plans.

Lately, there's been a lot of fear-mongering about the planet's food supply, even when we should be rejoicing in ever-expanding production. As companies turn to genetic modification (GM) techniques to produce sturdier food, such as cold- or insect-resistant crops, the technophobes appeal to fear of the unknown, calling such foods "Frankenfoods." Romanticists longing for an earlier age appeal to a fear that the world will be subsumed to corporate giants.

Guest contributor Martin Zelder explains why fears of GM foods are overblown, offering suggestions on how public policy should respond to these concerns. Jonathan Adler, meanwhile, reports that the news about the environment is actually quite good when compared with the dire predictions of groups and individuals who still, after being discredited time and again, are given entirely too much credibility.

Technology Focus

One major contributor to America's continuing prosperity is the information technology sector, where computing power, telephone service, television, and commerce are mixing together to provide new avenues for business, education, and creativity in ways that we can't yet imagine. Even in this fascinating and liberating sector, though, fear remains.

Heartland policy advisor Jim Johnston takes on the fear of monopolies in our lead story. In an excerpt from a recent *Heartland Policy Study* on Internet access, David B. Kopel contends we have little to fear from the possibility that cable companies will dominate residential broadband Internet access. And I address a concern raised by many state and local officials: that e-commerce will cause a meltdown of government budgets.

Featured Columns

Sometimes, of course, fear can be a useful emotion, if accompanied by steel-eyed realism in looking at potential dangers. Health columnist Twila Brase and Regulation columnist Murray Weidenbaum demonstrate that we are quite right to fear the damage that government-first programs and ways of thinking can cause. Efforts to rein-in rising health care costs—a problem itself the product of government policies—are gradually stripping each of us of medical privacy. Unnecessary and even arbitrary regulations, meanwhile, threaten our supplies of reliable electricity.

Other columns this month look at privatizing parole and probation, suburban schooling and school choice, property taxes, and the unreported rise in welfare spending. 

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positions and anticompetitive practices to exploit other firms. This, in turn, justified antitrust action by the courts.

A review of the economic history of the Standard Oil case reveals an uncanny parallel with the Microsoft case, and even a possible solution. But it is not at all like the renderings of the prosecutors and pundits.

The popular myth is that Standard Oil engaged in predatory behavior by buying up competing refineries so that it could then raise prices above the competitive level. It was also alleged that Standard Oil coerced price discounts from railroads for shipping crude oil and kerosene.

As for the first charge, oil prices did not go up after Standard Oil acquired other refineries. As author Daniel Yergin points out, oil prices went down, which is typical for new products. Moreover, Professor John McGee of the University of Washington has shown in 1958 and again in 1990 that Standard Oil was not engaging in predatory behavior.

A review of the economic history of the Standard Oil case reveals an uncanny parallel with the Microsoft case, and even a possible solution.

What then could be the reason for buying up refineries? One answer, according to Yergin's book *The Prize*, was Rockefeller's concern about the inferior and dangerous way some refiners made kerosene, the principal product of the day. Shoddy kerosene tended to explode rather than just burn. If this risky impression became entrenched in the minds of consumers, it would adversely affect the sales and growth prospects of the entire industry, including Standard Oil.

Thus, it was in Rockefeller's interest to buy up the substandard refiners and upgrade them to produce a higher standard of kerosene, as well as a long list of other petroleum products that were later developed. Indeed, that is why Rockefeller called his company Standard Oil.

Microsoft is serving a similar function for the computer industry, trying to bring a higher standard of operations at a lower price in a rapidly growing market.

Operating Systems and Pipelines

The second charge, that Standard Oil was able to extract discounts from railroads, is also similar to what Microsoft is alleged to be doing to software producers and hardware manufacturers. However, what is usually not mentioned about the Standard Oil case is that railroads in the 19th century were trying to form a cartel to charge above-market prices.

Cartels orchestrate across-the-board reductions in output in order to raise prices above marginal cost, thereby increasing the profits of all members of the cartel. However, there is a strong incentive for each member to quietly reduce price in order to attract more sales and more of the monopoly profits. If all the members do this, the monopoly profits are competed away. Since Standard Oil was a nationwide corporation shipping a lot of crude oil and kerosene on the railroads, it was in a good position to encourage some railroad cartel members to offer secret discounts—much as Microsoft cuts deals with specific computer vendors.

When Standard Oil was broken up by the court, it was done on a geographical basis. That was an odd choice, since it left the same number of Standard Oils in each region as existed before the breakup, hardly a way to promote competition in the oil industry. However, it was a good way to bolster the profits of the politically well-connected railroad cartel. Calling on the government to gain advantage over another firm is hauntingly similar to the Microsoft case.

The railroads did not enjoy their profits for long. The oil companies reduced their shipping by railroad and increased their own pipeline transportation. It was a decidedly lower-cost way of doing business and it accrued to the benefit of consumers. Microsoft's operating system, I suspect, is similar to the oil company's pipelines, in that it allows Microsoft to bring new features and applications to market faster and cheaper than relying on its competitors.

An Industry Institute

Another development in the wake of the Standard Oil decision was the emergence of the American Petroleum Institute. The ini-

tial rationale was to promulgate and enforce technical standards for the production of refined products. The API still performs that function with the active participation of the individual members of the industry.

The trade association model may also be a solution to the Microsoft case, one that involves neither wholesale dismemberment nor extensive regulation of Microsoft. A software trade association could, for example, issue consensus input and output interfaces with core programs like operating systems and networks. That way applications developers and the holders of operating system copyrights, like Microsoft, could negotiate revisions and updates. There might also be a provision for appeal to a government body in case there is a failure to reach agreement. Experience with a similar system for natural gas pipelines in Texas indicates that the direct parties diligently avoid involvement by the regulatory agency by settling disputes among themselves.

The trade association model may be a solution to the Microsoft case that involves neither wholesale dismemberment nor extensive regulation of Microsoft.

As strange as it might seem, Dolly Parton and John D. Rockefeller have a lot to teach us about protecting intellectual capital in the software business. If only the legal system will listen. With the recent appointment of Judge Richard Posner as a voluntary mediator, there is hope. Judge Posner is a prominent member of the law and economics discipline.

Jim Johnston is an economist and a policy advisor to The Heartland Institute. He can be contacted at jimjohnston@compuserve.com.

Crime

Morgan Reynolds

Morgan O. Reynolds is director of the Criminal Justice Center at the National Center for Policy Analysis.

How to Rehabilitate Probation and Parole



Available on **PolicyFax**

Conditional Post-Conviction Release Act.
Model legislation for authorizing private-sector involvement in probation and parole. (American Legislative Exchange Council, 1996, 4pp.)

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On the Web, go to

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At the end of 1998, 3.4 million people in the United States were on probation and 705,000 on parole. That's one in 50 adult U.S. residents "under the supervision of the criminal justice system" yet free on the streets.

There are problems with the system, to put it mildly. For example, people on probation or parole commit new crimes:

- Kenneth McDuff, a rapist and multiple killer from Texas whose death sentence was commuted to life imprisonment, was paroled; shortly thereafter he raped and murdered another woman.

- A California parolee abducted and murdered 12-year-old Polly Klass in a case that drew national attention.

- Probationer Buford Furrow wounded five when he opened fire on a Jewish day-care center in Los Angeles and murdered a Filipino letter carrier.

These tragedies can't be pushed aside as "unrepresentative." Thirty-six percent of persons arrested for felony crimes are on probation, parole, or pretrial release at the time of their arrest. Adult felony probationers are rearrested on new felony charges at rates of 12 to 65 percent.

In Furrow's case, a judge in Washington state had ordered Furrow to give up his guns, but the probation officer never checked to make sure he had done so. In nearly 70 percent of cases, probation officers do not make "collateral contact" to verify such things as employment or attendance in drug treatment programs. And 1 in 10 adult probationers have "absconded." In a probation bureaucracy of 50,000, only an estimated 11,500 directly supervise adult probationers, and case-loads are huge.

Markets Work for Bail

We can put the competitive market mechanism to work on this problem by privatizing the probation and parole systems. Privatization is not a radical concept—it would involve little more than transferring the principles of the commercial bail bonding system, used for criminal defendants, to those convicted but eligible for release on probation or parole.

Bail operates on the principle that the accused will be freed from jail once he guarantees his presence in court on a certain date by posting a significant sum of money. If he shows up, he gets his money back; if he doesn't, he suffers a major financial loss.

Since most criminal defendants do not have enough money to post the full amount, the market provides the professional bail bondsman. If the bail agent is willing, he posts the entire bond in exchange for a fee, customarily 10 percent of the total bond. The bail agent loses all of the bond and usually his 10 percent commission if the defendant fails to show

up in court.

It's not surprising, then, that bail bondsmen expend a great deal of energy and ingenuity in supervising their defendants and getting them to court. Usually bondsmen require a cosigner for the bond, typically a family member.

Another reason that private bail works is the use of bounty hunters to recover fugitives. They are driven by a powerful incentive: no compensation unless the fugitive is returned to court.

Privatization provides a market mechanism to help decide whom to release and not release on probation or parole.

On the whole, the private bail bonding system works well.

- Only 15 percent of felony defendants released on commercial bonds initially fail to appear in court, versus failure rates of 26 percent for those released on their own recognizance and 42 percent released on unsecured bonds.

- Fugitive rates at the end of one year are 3 percent for surety bonds, 9 percent for recognizance releases, and 19 percent for unsecured bond releases.

- Felony defendants released on surety bonds have a 9 percent re-arrest rate during their release compared to 15 percent for recognizance releases and 16 percent for unsecured bonds.

Post-conviction release bonds could be set by the courts or parole boards based on the criminal's history, the amount necessary to be a significant inducement to good behavior (which will depend on the criminal's wealth), and the criminal's prospects for a productive, noncriminal life. As with bail, many criminals would seek family and friends as cosigners; another source of funds for parolees would be wages earned in prison and in the free world. There is ample precedent for paying fees, since most states already allow local probation departments to collect fees from probationers.

If no intimate of the criminal or any private bondsman cared enough to risk his own money on the eligible convict, why should the general public risk that person on the streets? Privatization provides a market mechanism to help decide whom to release and not release.

While many people move to suburbs in search of better school systems, a suburban address is not a guarantee of a good education, as parents in two states recently found out.

New York

In November of last year, parents in many New York communities were shocked to discover that one in five of their own suburban eighth-graders had failed to meet state standards in math.

The New York state math test, administered for the first time during the past school year, is based on a new math curriculum, established in 1998, for kindergarten through eighth grade. The results of the new test revealed that millions of New York state students are unprepared for high school work: 38 percent of students statewide, ranging from 90 percent in Rochester, 77 percent in New York City, and 59 percent in Suffolk County's East Hampton District, to 20 percent in Rye, Mamaroneck, and Great Neck.

Charter schools "allow a multiplicity of communities to form around shared visions of what a good school can be and what sort of education is best for children."

—DR. CHIARA R. NAPPI

While defenders of public schools frequently blame the poor academic performance of inner-city students on low expectations and the students' home environments, these are not significant factors in most suburbs. Although some New York school officials suggested that rote learning and a shortage of qualified teachers were part of the problem, Education Commissioner Richard C. Mills laid the blame on the curriculum taught in the schools.

"If you don't like the results, what do you do?" he asked. "First of all you look at what is actually taught in every school in every classroom."

Princeton

That was exactly what a group of concerned parents did in the 1980s and early 1990s in the K-12 public schools in another privileged community: Princeton, New Jersey.

While the 3,000-student Princeton Regional Schools had an excellent reputa-

tion, with 85 percent of its graduates attending college and some of the highest SAT scores in the state, many parents became concerned when school officials told them that curriculum was not very important, that "one size does not fit all," and that they were catering to the children's individual needs and fostering self-esteem.

"It was hard to find out what was being taught in a given classroom," writes Dr. Chiara R. Nappi, author of a report on the Princeton schools. Decisions about curriculum, she says, "were completely in the teachers' hands."

As a result, some children were left with serious learning gaps as they progressed from grade to grade. Many parents in Princeton were capable of helping their children at home and making up these deficits on an ongoing basis. By the time these youngsters got to high school, they were ready to take advanced placement and accelerated courses.

But not all parents could make up the deficit, and many students—particularly those who were socioeconomically disadvantaged or minority—fell behind more each year as the learning deficit accumulated. By the time these youngsters reached high school, they needed remedial instruction. Many parents believed this outcome was a result of the school system's unstructured and unambitious curriculum, so a group of them set out to change the system, to help all students.

The parents tried, for ten years, a variety of strategies to change the public school system from within—all without success. They worked directly with teachers and principals, submitted petitions to the Board of Education, worked through the local PTO, got themselves elected to the Board of Education, and even earned a majority of the seats on the Board.

But parents in the community were divided over the kind of education that public schools should provide. Moreover, the teacher union used its power to protect the status quo. Thus, even when a majority of like-minded reformers was elected to the school board, the local teacher union was able to resist curriculum reform by insisting that such decisions should be made by professional educators.

Then, some of the parents established a charter school. Their school opened in September 1997 and appears to be remarkably successful, drawing its students from all segments of the community.

The Princeton public schools have since begun to make their curriculum more rigorous.

"Charter schools offer a new kind of local control," says Nappi. "Instead of forcing all groups in town to accept a single sort of school, they allow a multiplicity of communities to form around shared visions of what a good school can be and what sort of education is best for children."

Education

George Clowes

George Clowes is managing editor of *School Reform News*, a monthly newspaper published by The Heartland Institute.

Suburban Parents: Choice Is the Only Solution



Available on **PolicyFax**

Why Charter Schools? Dr. Chiara R. Nappi tells the story of suburban parents who started their own school. (Thomas Fordham Foundation, October 1999, 24pp).

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Environment

Jonathan H. Adler

Jonathan H. Adler is senior director of environmental policy at the Competitive Enterprise Institute in Washington, DC.

The Progress Explosion



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It's Been a Very Good Century, But.
Environmental and medical advances could be stymied by anti-science forces. (American Council on Science and Health, September 1999, 6pp.)

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Two hundred years ago, the Reverend Thomas Robert Malthus published his now famous *Essay on the Principle of Population*. In it he declared that "the power of population is infinitely greater than the power in the earth to produce subsistence for man."

Unchecked growth in human numbers, he warned, would outstrip humanity's capacity to produce food and lead to widespread famine.

Throughout the 1990s environmental analysts have repeated Malthus' admonition. In 1968, Paul Ehrlich proclaimed that "the battle to feed humanity is over," and mass starvation was imminent. Throughout the 1970s, '80s, and '90s, Lester Brown and the Worldwatch Institute have warned repeatedly that an implosion of food stocks is just around the corner.

Time and again these predictions were made. Time and again they failed to materialize. As human numbers have increased, so has humanity's capacity to innovate and overcome scarcity.

Many Reasons to Celebrate

Where environmentalists once feared the population explosion, now they should celebrate the progress explosion. As documented in the Competitive Enterprise Institute's new book, *Earth Report 2000: Revisiting the True State of the Planet*, edited by Ronald Bailey, this century has seen substantial advances in environmental protection and human well-being.

Real environmental problems remain, including rainforest destruction, habitat loss, and threats to fish stocks. But there are many reasons to celebrate the state of the planet as we enter the next century. Consider these marks of progress:

- Global life expectancy has more than doubled since 1900.
- An acre of farmland sustains nearly twice as many people as it did in 1900.
- From 1961 to 1995, per-capita food supplies increased nearly 20 percent.
- Proven reserves of oil have increased 15-fold since 1948.
- The average New Yorker today produces less garbage than the average New Yorker in 1900.
- A single fiberoptic cable made from 65 kilograms of silica can carry more information than a one-ton copper cable.
- Aquaculture production has increased by approximately 10 percent per year since 1984.
- In the past 30 years, world gross domestic product more than doubled.

Not only has there been substantial progress, but many of the Malthusian fears that dominate current environmental discus-

sions are unfounded. Dramatic increases in our use of chemicals have caused neither an increase in cancer nor a decline in sperm counts, as some environmentalists claim. The Vice President may believe that global warming is upon us, but global satellites that track temperature trends cannot find the warming predicted by computer models. Even if fears of a hothouse planet are justified, a growing body of research suggests that adaptation and policies that increase our resilience to change would be more advantageous than controls on fossil fuels, the primary source of greenhouse gas emissions.

Problems Remain

Despite the tremendous environmental progress of this century, serious environmental problems remain. Fishery stocks throughout much of the world are declining, tragic victims of the ocean commons. Forest lands may be increasing in the wealthy nations of the North, but tropical forests are diminishing throughout the less-developed nations in the South. There are no hard data documenting the extent of

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species decline, but it is generally believed that habitat loss, invasive species, and other factors imperil biodiversity in much of the world. Without doubt, if food production in the developing world does not continue to improve, massive swaths of habitat will be cleared for farmland.

A survey of the state of the planet reveals an important lesson if we want the progress explosion to continue: Institutions matter.

Where the institutions of a free society—property rights, contract, voluntary exchange, and the rule of law—are protected, human ingenuity and industry work to enhance sustainability. Free markets and voluntary institutions encourage wiser resource use and generate the wealth necessary to sustain environmental gains. Wealthier is healthier, and richer is more resilient. Learning this lesson can ensure continued progress for humanity and the planet on which we live.

In the proposed new "medical privacy" regulations, patients in need of care will soon be forced to serve the research and tracking purposes of intrusive government agencies and accounting-driven HMOs. Turning medical ethics on its head, government officials claim patient rights have been superseded by new national priorities.

When "administrative simplification" of medical data was enacted through the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Congress realized that standardization of data systems would lead to "improved access" to patient records. To assure that some privacy standards were created, Congress mandated the Department of Health and Human Services (DHHS) to write federal regulations if Congress failed to pass a privacy law by August 21, 1999.

In her initial September 1997 recommendations to Congress, DHHS Secretary Donna Shalala had written that a privacy standard should "allow for the smooth flow of identifiable health information for treatment, payment, and related operations, and for specified additional purposes related to health care that are in the public interest." [emphasis added]

Privacy Gives Way to "Public Interest"

In its just-released regulations, DHHS writes, "After balancing privacy and other social values, we are proposing rules that would permit use or disclosure of health information without individual authorization for the following national priority activities and activities that allow the health care system to operate smoothly."

These "public interest" and "national priority" purposes are many. Without a person's consent, his or her medical records could be opened to researchers, federal and state officials, and the police for 13 activities that include oversight of the nation's health care system, public health surveillance, medical research, judicial and administrative hearings, law enforcement investigations, health care directories, emergency circumstances, bank processing of payments, and government health data systems.

At the pleasure of managed care organizations, no consent would be required for the release of data pertaining to three additional activities—treatment, payment, and health care operations. Federal officials define these terms broadly.

The adage "don't judge a book by its cover" applies here. This "book" of regulations labeled "patient privacy" does nothing to advance patient privacy. The 131 pages of explanation and rationale that precede the 15 pages of regulations dismantle privacy

even as they espouse it.

While admitting that privacy is a fundamental right protected by the Fourth Amendment, the regulations state that "the right is not absolute." Officials admit that "health information is among the most sensitive," but forbid even the request for patient consent. They identify four new patient rights, but acknowledge no right of privacy or individual right of legal action. Tellingly, there are definitions for such terms as patient, provider, and health information, but none for medical privacy or confidentiality.

These regulations are a license to disclose, not a mandate to protect. Quite simply, administrative simplification is the mandatory standardization of medical data for the legalized, freewheeling collection, analysis, and exchange of patient information across the nation and the world. Since Congress failed to pass a law, publication of the final rule is set for February 21, 2000 with full implementation two years later.

Without public protest, the new millennium will bring unsurpassed patient surveillance. Roving eyes, meddling managers, and greedy fingers will soon be allowed to open a treasure chest of intimate secrets.

These patient privacy regulations are a license to disclose, not a mandate to protect. The 131 pages of explanation and rationale that precede the 15 pages of regulations dismantle privacy even as they espouse it.

Congress can protect the basic right of patient privacy and re-establish the value of medical ethics by passing a real medical confidentiality bill that includes mandatory patient consent prior to assessment or disclosure, stiff criminal and civil penalties for all security breeches, and permission to have paper medical records—acknowledged by the DHHS regulations as "less likely to become disseminated broadly through the health care system."

As government interests, managed care, and research profits threaten to expose patients to discrimination and exploitation, the nation's people stand poised to consider protective pseudonyms and black market medicine. Is there a doctor in the house—of Congress?

Health Care

Twila Brase, RN, PHN

Public health nurse Twila Brase is president of Citizens' Council on Health Care.

Medical Privacy Under Attack—Still



Available on **PolicyFax**

Wisconsin's Medical Big Brother. Medical privacy is already compromised on the state level. (Wisconsin Policy Research Institute, Summer 1999, 6pp.)

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Law

Matthew Berry

Matthew Berry is an attorney at the Washington, DC-based Institute for Justice (www.ij.org).

Lessons from School Choice



Available on **PolicyFax**

The Effectiveness of School Choice in Milwaukee. Harvard scholars evaluate the Milwaukee Parental Choice Program, giving it high marks. (Harvard Program on Education Policy and Governance, 1997, 24pp.)

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In the debate over school choice, we can now move beyond mere prognostication. This last fall, the groundbreaking Milwaukee school voucher program began its tenth year of operation.

This school year, the state of Wisconsin will provide the Milwaukee Public Schools with approximately \$5,000 of aid per pupil. But under the voucher program, low-income parents may instead choose to use their child's state aid allotment at any participating private school. Schools accepting vouchers must agree to select students from the program on a random basis and not to charge such students any additional tuition. What have we learned in ten years?

Parents like choice. The Milwaukee voucher program started off small in 1990, with fewer than 400 students attending seven private schools. But the program has grown each year of its existence. During this school year, approximately 8,500 students, most of them minorities, are using vouchers to attend more than 95 schools.

Choice improves student performance. After four years in the program, students attending private schools score significantly better than their public school counterparts in reading and math. Were these scores to be replicated nationwide, they would cut the achievement gap between white students and African-American students by as much as half.

Competition leads to public school reform. The fear that vouchers would harm public schools by draining away the brightest students has proven false in Milwaukee. The program's official evaluator has found that "choice students in this program enter near the very bottom in terms of academic achievement."

Similarly, contrary to opponents' predictions, vouchers have not left the Milwaukee Public Schools (MPS) bereft of sufficient resources. Under the program, voucher students take only their share of state education funds with them to private schools. Without vouchers, moreover, thousands of additional students would enroll in the public schools, leading to increased class sizes and a need for more capital expenditures.

Most importantly, however, the public school system has begun to undertake significant reform in response to the competitive pressure applied by the choice program. MPS now guarantees that public school students will read at grade level by the end of second grade, or else MPS will pay for individualized, private tutoring. The teacher union's new contract allows a dozen schools to select teachers without regard to seniority, and new assignments within the system can be guided by school-level parent-teacher interview committees rather than strict seniority. The district also has begun to create its own specialty

schools, such as one offering Montessori education, to attract students.

Milwaukee's vibrant educational marketplace also includes a diverse range of seven charter schools, with more on the way, and increased public school choice. One new charter school, the Central City Cyberschool, is located in a public housing project where every apartment will soon be linked to the Internet. Consistent with the school's focus on technology, each student is provided his or her own laptop computer.

Long Arm of the Law?

Vouchers won't lead to more government regulation of private schools. Contrary to the fears of some, the state of Wisconsin has not attempted to curtail the freedom of private schools to educate students in the manner they think most effective.

The most compelling evidence that vouchers aren't leading to burdensome regulation is the behavior of the private schools themselves. Each year, more and more schools voluntarily choose to participate in the program.

The most compelling evidence that vouchers aren't leading to burdensome regulation is the behavior of the private schools themselves. Each year, more and more schools representing a wide range of perspectives—Montessori, Catholic, Jewish, Lutheran, Muslim, and Afrocentric, to name just a few—voluntarily choose to participate in the program. And, to meet demand, many new schools have been established in recent years, especially in the non-religious segment of the marketplace.

As it approaches one decade of existence, the Milwaukee voucher program represents a model of how to provide high-quality educational opportunities to disadvantaged youngsters, while at the same time jump-starting desperately needed public school reforms. Choice's success in Milwaukee is the most effective rebuttal to the hysterical, Chicken Little-like arguments offered by the teacher unions against vouchers. The Milwaukee experience should give encouragement to those trying to provide low-income families across the nation the options now available to disadvantaged children in Milwaukee.

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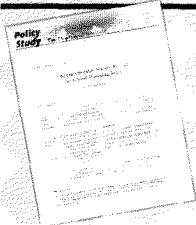


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The Questionable Science Behind the Global Warming Scare

by Joseph Bast

The cost of the Kyoto Protocol might be worth bearing if we knew three things for sure: (1) that man-made greenhouse gases are truly causing global warming; (2) that global warming is or will be bad for the natural environment and for human civilization; and (3) that the emission reduction schedule that is contained in the Kyoto Protocol is the best or most effective way to stop the threatened global warming from occurring. All three necessary conditions for accepting the treaty, however, are either false, or we currently lack sufficient knowledge to know whether they are true.

Heartland Policy Study No. 89, October 1998
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Fact Sheet, October 1999
The Heartland Institute
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Adrian Moore[®] is director of privatization and government reform at the Reason Public Policy Institute.

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Should Alabama Privatize Prisons? A case study provides details of the benefits of prison privatization. (Alabama Family Alliance, 1998, 17pp.)

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Critics of privatization say that private firms are not as accountable as public employees when things go wrong. A look at the current controversy over private prisons, however, illuminates the strong link between privatization and improved accountability.

A recent string of incidents has rekindled the debate over private prisons. Texas recently decided to take over a private jail embroiled in allegations of sexual abuse of inmates. In New Mexico, a correctional officer was murdered by an inmate. In Ohio, six inmates escaped a private prison.

A chorus of critics cites such events as proof that private companies should not be in the prison business. Unfortunately, the critics are missing the real lesson of these incidents: Private prisons are more accountable than government prisons. In each case, the private prison company made serious mistakes—mistakes it is justly paying for.

Of course, escapes, riots, rapes, and other terrible things happen at government prisons as well as private ones. Within two months of the Ohio escape, there were escapes from maximum-security government prisons in Tennessee and Texas. One week after the riot in New Mexico, several cor-

Privatization is a means of exerting greater control—not to political whim, but to performance.

rectional officers were injured in a riot in a government-run Florida prison. Weeks before the sexual abuse allegations at the Texas jail came to light, the U.S. General Accounting Office reported that the problem of inmate sexual abuse by correctional officers is all too common in government prisons.

But none of these incidents led to calls for the government to get out of the business of running prisons. That's fortunate, since there are far more government-run than privately run prisons. In a war of anecdotes, that avalanche of ammunition would assure victory for private prisons.

If both private and public prisons face the same sort of challenges, the true indicator of accountability is what happens after an incident. Soon after the escape from the private prison in Ohio, wire fences, alarms, and guard towers were installed and several employees were fired. (The state of Ohio has

actually privatized more prisons since the escape.) In other cases, private firms have gone out of business after failing to perform.

Contrast that with the glacial speed of change in government prisons. In Corcoran, California, government correctional officers were allegedly staging "gladiator fights" between inmates. Years later, after allegations by the district attorney and FBI that prison officials and the guards' union had interfered with investigations, little has changed; only now are criminal charges being brought against the correctional officers. The empty promises of new policies fall far short of the changes true accountability would demand.

Firms Held to Account

A common concern about privatization—not just of prisons but all services—is that policymakers will lose control or that accountability will suffer. But, by competing with government prisons and each other, private prisons raise the bar for what we expect from our correctional system.

Remember the old saying: He who pays the piper calls the tune. By establishing government as an independent monitor with the power to ax companies that don't perform, the system—both its public and private components—is more responsive. Private prisons bring competition into the stagnant world of correctional management and spur innovations in prison design and operation. They shake up correctional departments, bringing accountability to systems otherwise fraught with corruption, crisis, and controversy. Public officials must recognize their power to hold private prisons accountable and capitalize on it.

That lesson applies to privatization in all its manifestations. Reform-minded state officials have always struggled for ways to work with state agencies to bring about change, or for ways to force them to change. Often neither route is easy to navigate. Privatization brings competition, and offers a third way to achieve reform. And it is a means of exerting greater control and accountability—not to political whim, but to performance. Privatization that uses a performance-based contract—one that bases payment on achieving specified goals, along with an intelligent monitoring plan—holds the contracting firm accountable in ways no state agency could ever be given its politicized goals and bureaucratic rules.

If you remain skeptical, follow what happens in the aftermath of the next prison break or beating that grabs the headlines. If it was at a private prison, you can be sure heads will roll. If the scene was a government prison, you can be sure only of hearings, the naming of blue-ribbon commissions, and other meaningless gestures. 

It was sad to read about the effects of the electricity blackout in the New York area last summer, and especially to learn of the damage to important medical research. The most serious concern, however, is the continuing likelihood that blackouts and less dramatic power shortages will recur.

Because of the importance of the problem, let us see what lessons can be learned from New York's unfortunate experience.

Since electric utilities are a highly regulated industry (subject to a variety of federal, state, and local rule-making authorities), one place to start is to examine the role of government regulation. In this instance, there seems to be a case of collective amnesia.

There is something fundamentally wrong with a regulatory process that permits an important and expensive project to be killed by one government official after all the regulatory approvals have been obtained and the investment has already been made.

In all of the extensive coverage of the New York blackout, there was no reference to the abandoned Shoreham nuclear power plant and why it was not available to supply electricity in a time of real need. If Shoreham were operating today, the chances are very good that the New York area would not now be facing the prospect of further electricity shortages.

It does not take an expert in American history to recall that this \$6 billion investment by the Long Island Lighting Company (LILCO) in enlarging the electricity supply of the area was complete when the plant was dismantled in 1994. After a series of cost overruns and other problems (admittedly, LILCO was not a candidate for any Business Hall of Fame), the Shoreham project had attained the necessary licenses prior to the adverse decision of the governor at the time, Mario Cuomo.

Indeed, the only requirement that Shoreham did not meet was to get the governor to approve the evacuation plan that would be needed in the remote contingency that a serious emergency would occur.

Governor Cuomo's adverse decision on Shoreham was not based on any new developments that occurred after the other approvals were granted. Rather, it was an arbitrary, politically correct course of action. Cuomo reportedly ordered state officials not to approve any LILCO evacuation plan. The result was the dismantling of this costly new facility—and a shortage of power during the summer cooling season.

Nuclear power is controversial in some parts of the United States. But that is not necessarily the case around the country. For example, the Calloway nuclear power plant is owned and operated in Missouri by the Union Electric unit of Ameren-UE. Most Americans have never heard of Calloway. That is because it is a reliable and trouble-free provider of electricity. No government official tried to prevent it from going into operation.

Even though Calloway—and other plants—demonstrates the successful use of nuclear power, it would have been understandable if, at the beginning of the regulatory process, New York State had taken action to prevent the construction of a nuclear-powered generating plant. If such negative action had been taken expeditiously, the erstwhile LILCO would have had the opportunity to invest the same funds in an alternate, conventionally powered electricity generating and distribution facility. Belatedly, this is what LILCO's successor, Long Island Power Authority, is now thinking about doing. This, of course, after much time and expense due to the regulatory delay, and ultimately, deathblow.

There is something fundamentally wrong with a regulatory process that permits an important and expensive project to be killed by one government official after all the regulatory approvals have been obtained and the investment has already been made. There must be a better way to run a business, and a government.

We could learn from the Japanese experience. Ironically, the only nation that has suffered direct nuclear attacks depends on atomic energy to a greater degree than almost any other country.

However, in accord with their tradition of obtaining widespread agreement before undertaking a major activity, the Japanese typically involve representatives of all the affected groups prior to beginning construction. But once construction is under way, there is little opportunity for government officials or private interest groups to repeatedly reopen the issues that were settled at the outset.

New York—and other states—can do worse than undertaking fundamental regulatory reform under the banner, "Remember Shoreham."

Regulation

Murray Weidenbaum

Murray Weidenbaum is chairman of the Center for the Study of American Business.

The Link between Regulation and Power Blackouts



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Deregulating the Market for Electricity. To increase the energy available to fuel economic growth, policy-makers must deregulate the electricity industry. (National Center for Policy Analysis, October 1999, 3pp.)

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Taxes

Bill Ahern

Bill Ahern is communications director for the Tax Foundation.

Property Tax Collections Reach New Heights



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Property Tax Relief in Washington. Do property tax limitation measures work? Here is one state's experience. (Washington Institute Foundation, August 1998, 2pp.)

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According to estimates in a new Tax Foundation *Special Report*, property tax collections hit an all-time high in 1999. The analysis is "State and Local Property Tax Collections," by economist J. Scott Moody.

Local government units, including counties, cities, and school districts, will collect approximately \$221 billion in property taxes in 1999, while state governments collect \$11 billion.

Adjusted for inflation, property tax collections have risen steadily since 1950, except during a series of tax revolts in the 1970s made famous by California's Proposition 13. The decline bottomed out in 1981, and property tax collections have grown 69 percent since then.

In FY 1996, the latest year for which data are available, 73 percent of all local tax collections came from property taxes. Coming in a distant second was sales tax revenue (16 percent), followed by income taxes (6 percent).

Local government units, including counties, cities, and school districts, will collect approximately \$221 billion in property taxes in 1999, while state governments collect \$11 billion.

When it comes to local property taxes compared with the state population, New Jersey localities collected the most per-capita (\$1,606). Following New Jersey are New Hampshire (\$1,531), Connecticut (\$1,425), New York (\$1,282), and Rhode Island (\$1,154). The bottom five are Louisiana (\$309), Arkansas (\$299), Kentucky (\$258), New Mexico (\$257), and Alabama (\$202).

In terms of personal income, New Hampshire localities top the list with \$59 collected for every \$1,000 of personal income. Following New Hampshire are New Jersey (\$53), Vermont (\$53), Maine (\$52), and Rhode Island (\$48). The least-taxed states by this measure are Louisiana (\$16), Delaware (\$16), New Mexico (\$14), Kentucky (\$14), and Alabama (\$10).

State-level property tax collections are small compared to local collections, and they account for only 2 percent of state revenue. However, they have begun growing more rapidly. In per-capita terms, six states collect more than \$100 in property taxes. By far the largest is Washington, with per-capita property tax collections of \$329. The four next highest states are Montana (\$263), Wyoming (\$174), Michigan (\$169), and California (\$106).

As a percentage of personal income, only two states collect more than \$10 per \$1,000 of personal income: Montana (\$14) and Washington (\$14). Wyoming ranks third (\$8); Michigan, fourth (\$7); and Kentucky, fifth (\$6). No other state levies more than \$4 per \$1,000 of personal income in property taxes.

Eleven states, including New York and Texas, do not levy property taxes at all.

Local Property Tax Collections Per Capita and Per \$1,000 of Personal Income and Corresponding Ranks

State	per \$1,000 of personal income	Rank per \$1,000	Rank per capita
Alabama	\$10	50	50
Alaska	\$43	10	11
Arizona	\$31	25	29
Arkansas	\$16	45	47
California	\$25	35	31
Colorado	\$30	26	19
Connecticut	\$43	9	3
Delaware	\$16	47	43
Florida	\$33	21	16
Georgia	\$29	29	27
Hawaii	\$21	42	37
Idaho	\$29	30	33
Illinois	\$40	11	10
Indiana	\$32	23	26
Iowa	\$39	12	14
Kansas	\$34	18	18
Kentucky	\$14	49	48
Louisiana	\$16	46	46
Maine	\$52	4	8
Maryland	\$26	33	24
Massachusetts	\$37	15	7
Michigan	\$24	36	32
Minnesota	\$36	16	13
Mississippi	\$26	34	41
Missouri	\$22	39	39
Montana	\$34	19	30
Nebraska	\$44	8	12
Nevada	\$21	41	34
New Hampshire	\$59	1	2
New Jersey	\$53	2	1
New Mexico	\$14	48	49
New York	\$45	7	4
North Carolina	\$22	38	40
North Dakota	\$33	20	28
Ohio	\$31	24	23
Oklahoma	\$16	44	45
Oregon	\$33	22	20
Pennsylvania	\$29	28	25
Rhode Island	\$48	5	5
South Carolina	\$27	31	35
South Dakota	\$39	13	17
Tennessee	\$20	42	42
Texas	\$37	14	15
Utah	\$27	32	38
Vermont	\$53	3	6
Virginia	\$30	27	22
Washington	\$22	40	36
West Virginia	\$22	37	44
Wisconsin	\$46	6	9
Wyoming	\$35	17	21

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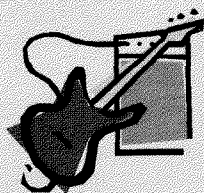
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against Microsoft, one of the most successful business organizations in human history."

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New documents on Microsoft, broadband access to the Internet, development impact fees, and global warming

School Reform News



Court Upholds Choice in Arizona

The November issue of School Reform News gives front-page coverage to the U.S. Supreme Court's decision supporting Arizona's tuition tax credit program. A "Buyer's Guide to Educational Software" and exclusive interview with teacher testing pioneer William L. Sanders round out the issue.

Begin reading School Reform News

Environment News



Alaska's Forests Left to Die

While state and private landowners have aggressively to remove diseased trees and Alaska's majestic Kenai Peninsula, the spruce bark beetle has been left unchecked on publicly owned lands. The story merits front-page coverage in the November issue of Environment News.

addresses global warming; urban sprawl; sound science, and "clusters."

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Welfare

**Robert Rector &
David Muhlhausen**

Robert Rector is a policy analyst and David Muhlhausen is a research assistant at The Heritage Foundation.

Welfare State Continues to Grow



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The Changing Face of Welfare. The adjustments some former AFDC recipients must make demonstrate how giving out checks was never an adequate policy. (Family Research Council, November 1998, 10pp.)

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When President Lyndon Johnson launched the War on Poverty more than 30 years ago, he announced it was an investment that would repay its cost to society many times over.

Since that time, the United States has "invested" \$7.95 trillion (in constant 1999 dollars) in programs that provide cash, food, housing, and medical and social services to poor and low-income Americans. By contrast, the cost to the United States of fighting World War II was \$3.2 trillion (also in 1999 dollars). The cost of the War on Poverty has been more than twice the price tag for defeating Germany and Japan in World War II, after adjusting for inflation.

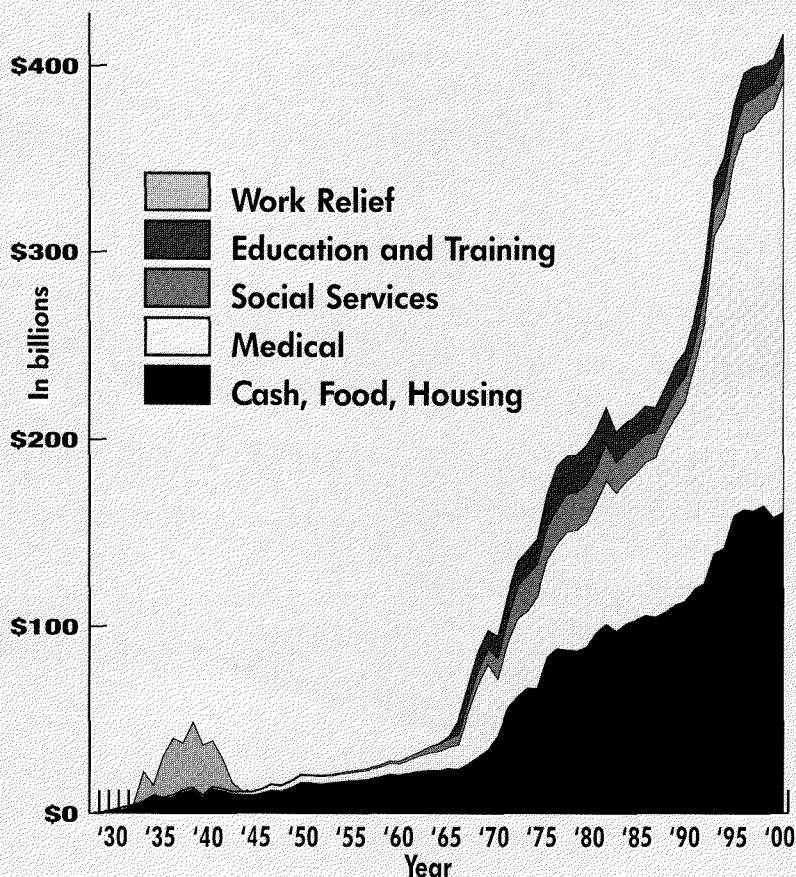
Welfare may be defined as the universe of means-tested programs that provide assistance exclusively to poor or low-income individuals. Overall, the growth of the welfare state has been staggering. Adjusting for inflation:

- As a nation, we now spend ten-and-a-half times what was spent when Lyndon Johnson launched the War on Poverty.
- Welfare spending has risen every year but three since the beginning of the War on Poverty.
- Cash, food, housing, and energy aid are nearly seven times greater today than in 1965 when the War on Poverty was launched.

Despite publicity to the contrary, the last decade has been marked by dramatic overall growth in means-tested welfare spending. We now spend twice as much on welfare in constant dollars as we did when Jimmy Carter was President. Although he pledged to "end welfare as we know it," President Clinton has, in fact, promoted a steady expansion of welfare programs. By 1995, Clinton's policies had earned him the title "king of the welfare spenders"; total welfare spending had reached \$379 billion and absorbed an historic high 5.2 percent of GDP.

It is interesting to compare the recent unreported mushrooming of the welfare system with the heavily publicized Reagan defense buildup in the 1980s. In a little over a decade, annual welfare spending has grown by \$184 billion—rising from \$245 billion in 1988 to \$430 billion in 1999. By contrast, the Reagan defense buildup was actually one-third smaller. Under Reagan, annual defense spending increased by some \$130 billion—rising from \$258 billion in 1980 to \$390 billion in 1989. (All figures are in constant 1999 dollars.) But while the Reagan defense buildup was incessantly criticized in the press and by Congress, and was declared damaging to the economy, the far-larger welfare buildup of the late 1980s and 1990s has not even been publicly acknowledged.

Federal, State, and Local Welfare Spending (billion \$)



You Say "Tomato," They Say "Poison"

by Martin Zelder

Fear surrounds the introduction of genetically modified foods into our food supply. According to the Campaign for Food Safety, "bio-engineers have begun creating hundreds of new [genetically engineered] 'Frankenfoods' and crops, oblivious to human and environmental hazards." Greenpeace argues that "genetically engineered food must be segregated and labeled." David Suzuki favors a moratorium on such foods.

But capitulating to such demands ignores both facts and logic. The facts are that the risks purported to attach to GM foods are overstated; the logic is that optimal regulation of GM foods does not involve such draconian strictures as segregation, labeling, or prohibition.

The facts of GM risks

The risks ascribed to GM foods are two-fold: damage to human health, and damage to the environment. Yet the evidence supporting these concerns is minimal.

One concern has to do with the safety of consuming GM foods. The essence of this qualm has been expressed by University of Toronto law professor Gillian Hadfield: "If you have no idea whether the tomato you are buying is conventional or genetically engineered, how can you link any adverse reaction you have (or don't have) to its source?"

Hadfield's characterization of risk is exaggerated in two respects. First, only two adverse health reactions from ingesting GM foods have ever been recorded. Even safety-conscious Consumer Reports acknowledges that "there is no evidence that genetically engineered food now on the market is unsafe to eat."

The second exaggeration of risk, that GM foods are different, is more fundamental: as the Hudson Institute's Michael Fumento notes, "there is no inherent difference between a bioengineered food and a non-bioengineered one." What Fumento refers to is the concept of "substantial equivalence": a GM and a conventional tomato are chemically identical if they are "compositionally and nutritionally similar within the limits of the normal biological variation in edible varieties of the plant."

A second purported GM risk is environmental. GM crops may become or create weeds; they may harm other organisms; they may create resistance among pests to genetically transferred toxins; and they may create new plant viruses. Each of these illustrates the economic problem of externalities—costs potentially imposed by one party on another.

While it is beyond the scope of this brief article to assess the seriousness of these environmental threats, some reputable ecologists caution against overreaction. According to one view, the probability of harm from any GM organism is the product of six underlying probabilities: the

probability the organism will be released, will survive, will multiply, will be transported to an effective location, contains genetically transferable information, and will be harmful. If each of these component probabilities is 1 percent, the probability of harm is one in a trillion! Even the authors of a recent book recommending tighter regulation of GM foods admit that "the long-term impacts of transgenic plants in the environment are unpredictable and difficult, if not impossible, to predict at the current level of scientific understanding."

The logic of optimal GM regulation

In the face of these hypothesized risks to health and to the environment, a number of commentators have urged extensive regulation of, and even a moratorium on, GM foods. But more parsimonious solutions are preferable.

A less extreme mechanism than mandatory labeling or bans or moratoriums is products liability law. Economic analysis of products liability law indicates that the liability for harm should be allocated so as to minimize the cost of avoiding harm. Thus, when it comes to foods, consumers currently have a reasonable legal expectation that consumption will not be imminently harmful, and the basis to recover damages if it is. Liability law, sensibly extended to GM foods, will efficiently deter sellers from purveying harmful foods.

Furthermore, rather than banning GM crops due to their risks of negative externalities for other farmers and the ecosystem, the lessons of optimal pollution control should be applied. Specifically, the discrete harms potentially generated by GM crops can be efficiently discouraged by standard pollution control devices: clear assignment of property rights, or fines corresponding to damages.

*GM foods offer
unprecedented and
enormous benefits in
terms of expanded food
supplies and concomitant
health benefits.
Squandering that potential
with overzealous regulation
is truly something to fear.*

Let's not call the whole thing off

It is easy to raise apocalyptic concerns regarding GM foods. These fears are, however, exaggerated. GM foods offer unprecedented and enormous benefits in terms of expanded food supplies and concomitant health benefits. Squandering that potential with overzealous regulation is truly something to fear.



Martin Zelder Ph.D. is director of health policy research for The Fraser Institute, a public policy research institute in Vancouver, Canada. For more information on the Institute and Dr. Zelder's work, see www.fraserinstitute.ca.

Access to the Internet: Regulation or Markets?

by David B. Kopel

On September 24, 1999, The Heartland Institute released Heartland Policy Study #92, "Access to the Internet: Regulation or Markets?" by David B. Kopel. The 68-page report is available from The Heartland Institute for \$10. It is also available on the World Wide Web at www.heartland.org.

Residential broadband access to the Internet is becoming a reality around the country as long-distance telephone and cable companies spend billions of dollars digitizing the nation's cable television network. Competition within the cable industry and among cable and providers of other broadband technologies is intense. Against this background, a group of Internet Service Providers, content providers, and local phone companies is demanding access to cable networks on terms as favorable as those that the cable companies offer to their own Internet affiliates and subsidiaries. Granting their demands would endanger future investments in broadband systems, pose insurmountable technical problems, and harm rather than benefit consumers.

1. Cable companies are making massive investments in broadband Internet access, setting off an explosion of innovation, competition, and growth.

"Broadband" refers to the ability of a single wire, cable, satellite dish, or antenna to carry several channels at the same time. This ability can greatly increase the quantity of data that can be transmitted and the speed it travels. Today, most Internet data move on a broadband network, but the "last mile" to a family's or small business' computer is on a narrowband, usually a dedicated phone line. This significantly reduces the speed that data can be received or sent.

Long-distance telephone and cable companies are spending billions of dollars to convert the "last mile" to broadband. AT&T is spending \$1.8 billion to upgrade the TCI cable lines to bring broadband Internet to 10.8 million homes, and \$600 million to upgrade the lines serving 4.2 million MediaOne homes. Time Warner is spending \$4 billion, and Comcast is spending \$1.2 billion for its broadband upgrade.

Currently, 106 million homes have cable television; about a quarter

of them can obtain broadband Internet access through a cable modem. New cable modems are being installed at the rate of one million per year. By the end of 1999, there will be about 1.6 million cable modem subscribers, and about 7.3 million by 2003.

2. Cable's competitors are not making similar investments, yet they demand access to cable's customers through the new broadband networks.

America Online and other companies are demanding in court and in Congress that they be given access to the networks of cable companies. They want AT&T, Time Warner, and other cable television companies to be forced to offer their customers content from any Internet Service Provider (e.g., AOL, Mindspring) for exactly the same price that customers pay for content from the cable companies' own Internet Service Providers (e.g., @Home, RoadRunner).

While telephone companies, cable television companies, and wireless companies are working to build and expand broadband infrastructure, AOL has invested little in infrastructure. In fact, in 1997 AOL sold its infrastructure to WorldCom. AOL's market capitalization is over \$140 billion—larger than Chase Manhattan Bank or General Motors. This is surely large enough for AOL to construct its own facilities, rather than demanding that government force other companies to let AOL use their equipment.

AOL, Mindspring, and other ISPs are free to sit down with cable companies and negotiate terms to be included in the cable companies' broadband offerings. Such negotiations in fact are taking place in many areas of the country. But instead of negotiating an agreed-upon price, AOL and other companies want to force their way into the country's largest cable broadband systems on terms they get to dictate. They call their plan "Open Access," and their lobbying group calls itself the "OpenNet Coalition." This study uses the more appropriate term "Forced Access."

3. Competition, not monopoly, characterizes the broadband marketplace.

The OpenNet Coalition claims cable companies are poised to dominate the market for high-speed residential access to the Internet, but experts expect their dominance to be limited in scope

*Advocates of Forced
Access ask us to
choose between a
free-market Internet based
on willing buyers and
sellers, and a public utility
model based on
regulations and politics.*

and short-lived. Most of cable's bandwidth is taken up with television content, and what remains must be shared with neighbors. This is why the @Home and RoadRunner cable modem services do not allow their customers to watch more than 10 consecutive minutes of streaming video, and why @Home has experienced slow or interrupted service problems at various times already.

Broadband cable faces severe competition from Digital Subscriber Line (DSL), which converts traditional telephone lines into high-speed broadband lines. By the end of this year, SBC will make DSL service available to 8 million residences and Bell Atlantic to 7.5 million of its customers. By 2002, 94 million phone lines owned by Regional Bell Operating Companies and GTE will have DSL available.

Wireless broadband, another competitor to cable, is likely to be a superior service for millions of rural customers. Motorola predicts there will be one billion wireless users worldwide by the year 2005. Electric utilities, which already have wired access to 95 percent of American homes and to almost 100 percent of businesses, are also poised to enter the broadband market. Electric wires can transmit data nearly 50 times faster than conventional telephone modems, though some technical problems remain to be solved.

Cable's eventual share of the U.S. Internet market is expected to reach only about 15 percent. Far from being a monopoly, cable companies will face stiff competition from the other 85 percent of the market.

4. It is technically impossible for cable companies to accommodate every ISP or portal that demands access to their customers.

Because cable broadband is shared by multiple users, too many users trying to use the system at the same time (especially users of high-bandwidth services like video) cause the network to slow dramatically. As telecommunications analyst Anna-Maria Kovacs testified before Congress:

"Cable networks are shared pipes. Because they are shared, it becomes difficult to control the actual speed any user will enjoy when multiple users are on-line. @Home and Road Runner are able to some extent to control bandwidth allocation, to ensure that a few customers do not hog the entire pipe and exclude all others. There is today no network management system that can do that bandwidth-allocation job when many ISPs are providing service over the cable network directly to the end user during periods when the network is carrying a full load. It is likely that such an operating system could be developed for cable networks, but it is not here today."

The technology to accommodate Forced Access does not presently exist. Two recent experiments with shared access—one in Australia involving 200 homes and the other in Clearwater, Florida involving access granted to a single ISP—involved scales of operation far too small to demonstrate the feasibility of Forced Access. To impose Forced Access today is to insist that cable companies do what is currently impossible: provide fast broadband access to an unlimited number of users.

5. Forced Access would reduce investments in all types of broadband systems, to the detriment of consumers everywhere.

In an efficient economic system, risk and reward go together. If one company is made to bear all the risks, but the rewards are shared with its competitors, the company will stop taking risks. This is exactly what would happen if Forced Access, as upheld recently by the District Court in Oregon, were imposed nationally. The investment firm Credit Suisse forecasts:

"If this ruling were to escalate to a national level, the deployment of broadband Internet access is likely to stall on both the cable and the ADSL side, affecting every Internet company under the sun. The biggest winners would be the narrowband ISPs, especially AOL, which controls half the market. Under this scenario, the biggest loser would be the average consumer, as the national deployment of broadband Internet access could be delayed by many years. . . ."

Cable and long-distance telephone companies are investing billions of dollars in broadband only because they believe they can legally exclude other companies from free-riding off their investments. Should Forced Access become public policy nationwide, such investments would dry up and widespread residential high-speed access to the Internet would be delayed indefinitely.

Cable and long-distance telephone companies are investing billions of dollars in broadband only because they believe they can legally exclude other companies from free-riding off their investments. Should Forced Access become public policy nationwide, such investments would dry up.

6. Continued reliance on markets, not new regulations, will insure the freedom and growth of the Internet.

Forced Access isn't necessary. Competition is intense within the cable television industry and among industries using different technologies to provide high-speed access to the Internet. In this instance, markets are working to attract new investors, produce new organizational forms, and drive down prices. There is no case for government intervention.

Forced Access would be counterproductive. It would cripple the growth of broadband Internet services for residential and small business customers by discouraging investment. Forced Access would remove the most important competitive pressure on all other broadband providers. And technical problems would degrade the quality of Internet access for many users.

Markets are the right choice. Advocates of Forced Access ask us to choose between a free-market Internet based on willing buyers and sellers, and a public utility model based on regulations and politics. Experience and common sense tell us that markets are the way to go.

Keeping the Internet free and growing requires that judges and elected officials not commit the fatal conceit of believing they can substitute their own judgment for the wisdom of millions of Internet users, entrepreneurs, and investors. That means relying on markets, not regulations.

Save the Internet from Death by Taxes

by John R. La Plante

Should states and local governments be given new ways of taxing the Internet? To the contrary, they ought to cut the taxes they already impose on the Internet and e-commerce.

Forrester Research estimates that e-commerce will take in \$1.3 trillion by 2003; state and local officials fear they will lose the tax revenues that might be due on those transactions. The growth of e-commerce, some argue, will mean that essential public services will suffer, as out-of-state transactions are not taxed. And then there's the fairness issue: why should interstate transactions be taxed differently from intrastate ones?

Those arguments are familiar, having been sounded during the growth spurt of the mail-order catalog industry. They are also false.

Problems with Taxing E-Commerce

There's no need for the money. The National Governors Association proclaims that without a "streamlined sales tax with simplified compliance requirements," there will be fewer teachers and police to serve the public.

The cries of desperation ring hollow, however, when one considers the financial condition of states today. State coffers, Dean Stansel and Stephen Moore write for the Cato Institute, are "awash in tax revenues." Michael Flynn, of the American Legislative Exchange Council, estimates that states have enjoyed surplus tax revenues of nearly \$75 billion over the past four years.

Scholars at the University of Texas estimate that in 1998 alone, the Internet was responsible for over 1.2 million jobs—representing more income for workers, and for governments, more taxes. By contrast, University of Chicago and Harvard researchers estimate that less than 2 percent of sales tax revenue will be "lost" to unreported Internet transactions.

State and local officials need to find more creative ways of responding to a changing marketplace than calling for more taxes. If the governors want to improve education, for example, many more effective and less costly measures—such as contracting out services and funding schools through a voucher system—are available.

They should also appreciate the political and economic value of any tax avoidance that the Internet breeds. Tax rebellion, of course, was one motivating force behind the American revolution. In a less dramatic fashion, tax competition among states contributes to economic growth. The growth in the Sunbelt, for example, was due in part to people escaping high taxes in the Midwest. After improving its competitive climate, "the Rust Belt" by some measures enjoys the strongest economy of the country.

It's unconstitutional. Under the U.S. Constitution, only Congress has the authority to tax interstate commerce. The U.S. Supreme Court has affirmed this in various cases, most recently (1992) involving the mail-order office supply firm Quill. Congressional leaders, fortunately, are in no mood to change the Constitution.

Fairness is elusive. The argument most likely to lead to e-commerce taxes is the fairness and economic efficiency argument. Shouldn't a Main Street retailer and an Internet retailer be required to collect the same tax?

Given the vagaries of sales taxes, though—the definition of what is and is not "food" is the most humorous portion of many states' tax codes—it's absurd to argue that any sales tax can be "fair." And unequal treatment may not be as much of a problem as we think. As established retailers gear up for e-commerce, the distinction between e-commerce and "bricks-and-mortar" business is becoming less important. The Internet, in other words, is becoming simply another tool for businesses to use, and recent sales data suggest that even on the Internet, shoppers are turning to established brand names (with a taxable, physical presence in their state).

Fairness in taxes is not in itself a good thing—not if it's brought about in a way that violates personal liberties and compromises limited government. Consider that under our present national income tax system, the effort to ensure compliance has brought about many overbearing tactics by the IRS. Do we really want to open the door to something like that when it comes to sales taxes? The privacy implications of the databases implicit in some of the enforce-Internet-taxes proposals are frightening.

Given the dynamic growth of the Internet and its tremendous potential, Internet-related taxes should be cut, not raised.

Cut Taxes, Don't Raise Them

Lost in the middle of concern over "lost" taxes is the fact that e-commerce is already subject to tax. Consumers are already subject to sales tax in those transactions where the business and consumer reside in the same state. Moreover, most e-commerce is conducted over phone lines or cable television lines, which are taxed at various levels of government.

Policymakers should keep in mind that we inevitably get less of what is taxed more. Given the dynamic growth of the Internet and its tremendous potential, Internet-related taxes should be cut, not raised.



John R. La Plante is managing editor of Intellectual Ammunition.

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Kansas Public Policy Institute

PO Box 1946, Topeka, KS 66601
785/357-7709; fax 785/357-7524
bcorkins@kppi.org, www.kppi.org

Kansas Public Policy Institute

The Kansas Public Policy Institute is dedi-
cated to the principles of limited govern-
ment, open markets, and individual free-
dom and responsibility. The Institute pub-
lishes studies and commentaries, and con-
ducts forums for public officials. Its studies
have included an analysis of the Kansas
highway system and a report on the mer-
its of pension reform in the state employee
retirement system.

Kansas Taxpayers Network

PO Box 20050, Wichita, KS 67208
316/684-0082, fax 316/684-7527

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AZ 85226, 602/940-9824

Landmark Legal Foundation

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Law and Economics Center

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FL 33124, 305/284-6174, fax 305/662-9159,
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League of Private Property Voters

PO Box 423, Battleground, WA 98604
360/687-2471; fax 360/687-2973
ccushman@pacifier.com

Lincoln Legal Foundation

100 West Monroe #1600, Chicago, IL 60603,
312/606-0951, fax 312/606-8879

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717/671-0776; fax 717/671-1176
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Minnesota Family Council

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55418-3265, 612/789-8811, fax 612/789-8857

Minority Mainstream

13555 Bammel North Houston #189, Houston,
TX 77066, 713/228-6246, fax 713/583-9534,
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6000, fax 608/849-8697, nma@motorists.com

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National Right to Work Legal Defense Foundation

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800/336-3600, fax 703/321-9613
info@nrtw.org; www.nrtw.org

National Tax Limitation Committee

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916/786-9400, fax 916/786-8163, LKUHLER@ns.net

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The St. Lawrence Institute

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Sutherland Institute

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Texas Public Policy Foundation

PO Box 40519, San Antonio, TX 78229, 210/614-0080, fax 210/614-2649, pppf@txdirect.net

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U.S. Term Limits Foundation

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Utah Taxpayers Association

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Virginia Citizens for a Sound Economy

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Virginia Institute for Public Policy

20461 Tappahannock Place, Sterling, VA 20165, 703/421-8635; fax 703/421-8631, www.virginiainstitute.org

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Washington Research Council

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